

HOUSE BILL REPORT

ESHB 1624

As Passed Legislature

Title: An act relating to child welfare.

Brief Description: Reinstating parental rights for adolescents who are in state care and have not been adopted and providing immunity for department of social and health services representatives.

Sponsors: By House Committee on Early Learning & Children's Services (originally sponsored by Representatives Kagi, Walsh, Appleton, Roberts and Haigh).

Brief History:

Committee Activity:

Early Learning & Children's Services: 2/9/07, 2/15/07 [DPS].

Floor Activity:

Passed House: 3/12/07, 98-0.

Senate Amended.

Passed Senate: 4/9/07, 44-0.

House Refuses to Concur.

Senate Amended.

Passed Senate: 4/19/07, 40-0.

House Refuses to Concur.

Senate Amended.

Passed Senate: 4/20/07, 46-0.

House Concurred.

Passed House: 4/20/07, 98-0.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Allows a dependent child to petition to have the previously terminated parental rights of his or her parent reinstated.
- Clarifies the purpose and responsibilities of shelter care, review, and permanency hearings.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Requires the court to review the case if a child is removed from a parent due to abuse or neglect a second time during the same dependency.
- Directs the Department of Social and Health Services to consult with licensed foster parents and to submit a report to the Legislature regarding tiered certification of foster parent licensing.

HOUSE COMMITTEE ON EARLY LEARNING & CHILDREN'S SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Kagi, Chair; Haler, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Appleton, Hinkle, Pettigrew and Roberts.

Staff: Sonja Hallum (786-7092).

Background:

Dependency and Termination of Parental Rights Background

If there are allegations of abandonment, abuse or neglect, or no parent who is capable of caring for a child, the state may investigate the allegations and initiate a dependency proceeding in juvenile court if appropriate. If the child has been removed from the home of the parent and placed into state care, the initial hearing in the case is a shelter care hearing to determine the need for further out-of-home placement.

The next hearing in a dependency case is the fact-finding hearing in which the court will determine whether the statutory requirements for finding the child dependent have been met. If the court finds the statutory requirements have been met, the court will find the child to be a dependent of the state.

Whenever the court orders a dependent child to be removed from the home, the court will enter a dispositional plan which will include the obligations of the parties including the parents, the supervising agency or the Department of Social and Health Services (Department), and the child. The dispositional order will contain an order for the placement of the child either within the home or outside of the home. If the child is placed outside the home, he or she may be placed with a relative or in non-relative foster care.

Within 60 days of assuming responsibility for the child, the Department is required to provide the court with a permanency plan for the child. The permanency plan will contain the desired goal for the child which may include a plan to return the child home, adoption, long-term placement, or guardianship, including a dependency guardianship.

The status of all dependent children must be reviewed by the court every six months. During the review the court will examine the progress of the parents in meeting the requirements of the dispositional plan. At this hearing the court may return the child to the home if the parent has made sufficient progress.

If the parent fails to make progress in curing the parental deficiencies which led to the dependency, or if one of the statutory aggravating factors exist, a termination petition may be filed. Federal law requires that after a child has been in foster care for 15 of the past 22 months, the state must file a petition to terminate parental rights unless the child is being cared for by relatives, there is a compelling reason why termination would not be in the best interest of the child, or the state has failed to offer the necessary services to the parent.

If the court finds the statutory grounds for termination are met, the court will terminate the parental rights and the parent will no longer have rights, privileges, or obligations toward the child.

Court Improvement Project

The national Court Improvement Project (CIP) was established by Congress in 1993. The purpose of the CIP was to require states to assess their foster care and adoption laws and judicial processes, and to develop and implement a plan for system improvement. The U.S. Department of Health and Human Services was charged with administering the national CIP through each state Supreme Court.

In Washington, the CIP assessment was completed in 1996 by the National Center for State Courts. The reauthorization of the CIP requires state courts to conduct a reassessment to update their earlier assessment findings. Washington's reassessment was completed in 2005.

The 2005 CIP reassessment found that "Washington State statutes and local court rules could be strengthened to better support court oversight, to clearly articulate the role of the court with respect to child welfare cases, and to clearly distinguish the purpose of different hearing types (especially review hearings vs. permanency planning hearings). The statutes do not make distinction with respect to the purpose, scope, and requirements of different hearing types." Washington State CIP Re-Assessment Final Report, National Council of Juvenile and State Court Judges, 2005.

Foster Parents

The Department licenses about 6,000 foster homes statewide to provide for the care of children taken into the custody of the Department as a result of child abuse or neglect. Foster parents must have a regular source of income to support their families, but financial assistance is provided to help with the costs of the foster child's needs. Monthly reimbursement amounts are provided based on the child's age and needs, with reimbursement rates ranging between about \$375 and \$800 per child.

Summary of Engrossed Substitute Bill:

Reinstatement of Parental Rights

A dependent child may petition the court to reinstate the previously terminated parental rights of his or her parent. The child will be provided counsel prior to the filing of the petition. In

order to file the petition three years must have passed since the parental rights were terminated, the child must not have achieved permanency, and the child must be over the age of 12 unless there is good cause to permit a child under age 12 to file the petition.

Once the petition is filed, notice will be given to the parents, Department, child's attorney, foster parent, and Tribe. The court will hold an initial hearing to determine whether the parent has an interest in reinstating parental rights and whether the parent appears fit to care for the child. If the court finds that it appears the best interests of the child may be served by reinstatement of parental rights, the juvenile court will order a hearing on the merits of the petition.

At the hearing on the merits of the petition, the court will conditionally grant the petition reinstating parental rights if the court finds the following by clear and convincing evidence:

- (1) the child has not achieved his or her permanency plan and is not likely to imminently achieve his or her permanency plan; and
- (2) reinstatement of parental rights is in the best interests of the child.

In determining whether reinstating parental rights is in the child's best interest, the court may consider the following:

- (1) whether the parent whose rights are to be reinstated is a fit parent and has remedied his or her deficits as provided in the record of the prior termination proceedings and prior termination order;
- (2) the age and maturity of the child, and the ability of the child to express his or her preference;
- (3) whether the reinstatement of parental rights will present a risk to the child's health, welfare, or safety; and
- (4) other material changes in circumstances, if any, that may have occurred which warrant the granting of the petition.

If the court conditionally reinstates the parental rights, the child will be placed in the custody of the parent. The case will be continued for six months and the Department will develop a permanency plan for the child reflecting the plan to be reunification. The Department must provide transition services to the family as appropriate.

If the child is successfully placed with the parent for six months, the court order reinstating parental rights will remain in effect. However, if the child must be removed from the parent due to abuse or neglect allegations, the court must dismiss the petition for reinstatement of parental rights.

The reinstatement of parental rights is a separate action from the termination of parental rights and does not vacate the termination of parental rights order that was previously entered. The order reinstates the parental rights to the child and is a recognition that the situation of the parent and child have changed since the time of the termination of parental rights.

Substantive Changes in Hearings

Shelter Care Hearings

The purpose of the shelter care hearing is to determine whether the child can be safely returned home while the adjudication of the dependency is pending.

The court must notify the parents at the beginning of the shelter care hearing of their rights, including the right to counsel. The court must also notify the parents of the nature of the shelter care hearing and the proceedings that will follow the shelter care hearing.

The court is required to make an inquiry into the case at the shelter care hearing, even if the parent decides to waive his or her right to a hearing. The court will look at the need for placing the child outside the home, where the child is placed, and what services the parties may need at this point in the case. However, the court may not order a parent to undergo treatment or evaluations at the shelter care hearing unless they are agreed upon. The court must consider the health, welfare, and safety of the child as paramount during its inquiry.

If the child is not released to the parent, the child may not be placed with a relative or non-relative if the placement may hinder reunification with the parent. The relative must also agree to care for the child, facilitate visitation with siblings, and cooperate with the background checks. Placement with the party is contingent upon their compliance with the court orders related to the care and supervision of the child.

Several areas are clarified including the time the shelter care hearing must be commenced when a request for a hearing is made, and that the Department must submit a recommendation for the need for further shelter care when the Department is the petitioner.

Permanency Hearings

The purpose of the permanency planning hearing is to review the permanency plan for the child, inquire into the welfare of the child and progress of the case, and to reach decisions regarding the permanent placement of the child.

Review Hearings

The purpose of the review hearing is to review the progress of the parties and determine whether court supervision should continue.

The foster parent who is currently caring for the child must be given notice of the review hearing. At the review hearing, if the child is not returned home, the court is required to inquire into the case and determine what efforts have been made in terms of services for the parents, what changes may be needed, whether there is a continuing need for placement, and whether visitation is occurring, as well as making any changes needed to meet the needs of the current status of the case.

If a child is removed from a parent due to abuse or neglect allegations, returned to the home of the parent, and the child is subsequently removed due to allegations of abuse or neglect, the court is required to hold a review hearing. The court must decide what appropriate action to take including whether to change the permanency plan or require that a termination petition be

filed. The court must use the best interest of the child as the primary consideration in deciding the appropriate action to take. The hearing must be held within 30 days of when the child was removed from the home.

Reorganization

Many of the changes in the bill are to existing law and do not involve the addition of new language, but are a reorganization of existing language. The bill reorganizes existing statutes to put like issues together within the same statutes.

Foster Parents

The Department is required to work, in conjunction with the University of Washington, to study the need and feasibility of establishing tiered classifications for foster parents. The Department must also facilitate a work group, convene focus groups, and report back to the Legislature by January 1, 2008 regarding the need for and feasibility of creating a tiered classification for foster parent licensing.

Appropriation: None.

Fiscal Note: Available. Fiscal note for substitute bill requested on February 15, 2007.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support of original bill) There have been some circumstances where children have been placed in care and have not thrived. We have seen children who have no permanency and no hope for adoption. There are also children whose parents' parental rights were terminated, yet they continue to run away to be with them and the parents have moved on and can now care for the children. In some circumstances it may be appropriate for the child to return to them. The Attorney General is concerned that this opens up the liability for the state. That is why the immunity clause is in the bill. Children who want to go to a parent who wants them home, and can take care of them, should have a legal process to allow that to happen. The bill provides another avenue in select cases for the approximately 250 children who are legally free and age out of the foster care system each year. The attorney needs to be provided sooner to help the child file the petition. Parents should be appointed counsel.

(Neutral) We support giving youth who are at least 12 years or older the right to petition. This bill gives youth a better voice in their lives and is critical to the system. This is where we fail youth. The age should not be limited to children over the age of 12. There are kids much younger who deserve to go back home. The dependency does not need to continue for another year. The Department needs to get out of the lives of these families. The immunity is reasonable, but should not cover damages the children receive while in foster care.

(With concerns on original bill) We have concerns with some of the language.

(Opposed) None.

Persons Testifying: (In support of original bill) Dave Wood, Elaine Wolcott-Ehrhart, and Bianca L. Tillett, Washington Families United; Patrick Dowd, Office of Public Defense; and Laurie Lippold, Children's Home Society of Washington.

(Neutral) Mary Meinig, Office of the Family and Children's Ombudsman.

(With concerns on original bill) Ross Dawson, Children's Administration.

Persons Signed In To Testify But Not Testifying: None.